

Decision ALTERNATE DRAFT DECISION OF COMMISSIONER LYNCH  
(Mailed 3/26/04)

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of the Application of SOUTHERN CALIFORNIA WATER COMPANY (U 133-W), for an order authorizing it to increase rates for water service by \$19,826,100 or 29.72% in the year 2003; by \$6,327,800 or 7.31% in the year 2004; and by \$6,326,200 or 6.81% in the year 2005 in its Region III Service Area and to increase rates for the General Office Allocation in all of its Customer Service Areas in this Application including: Arden-Cordova, Bay Point, Clearlake, Los Osos, Ojai, Santa Maria, Simi Valley and Metropolitan.

Application 02-11-007  
(Filed November 4, 2002)

**ORDER ON THE COMMISSION'S OWN MOTION  
STAYING CERTAIN ASPECTS OF DECISION 04-03-039**

**Summary**

At the Commission's March 16, 2004 meeting, we approved Decision (D.) 04-03-039. One of the issues addressed in that decision was the lease of American River water rights by Southern California Water Company (SCWC) to the City of Folsom (Folsom), beginning in 1994. We held that SCWC violated Pub. Util. Code § 851 in failing to seek the advance approval of the Commission for this lease. Pursuant to § 851, we held that, as to SCWC, the lease is void from its inception. (Ordering Paragraph (OP) 7.)

Upon further review of D.04-03-039, we note that the decision is unclear as to the rights of Folsom upon the effective date of the decision. The decision finds that Folsom's past use of and payments for the leased water rights are unaffected by the voiding of the lease as to SCWC. (*Mimeo.*, at 53 and OP 7.) The decision calls for briefing as to the prospective impact on Folsom of the voiding of the lease. (*Mimeo.*, at 53-54 and OP 9.) It also ordered SCWC to file, within 30 days, an application for prospective approval of the lease or a pleading indicating that it no longer wished to lease water to Folsom. (*Mimeo.*, at 54 and OP 8.)

We now recognize that the decision was unclear as to whether the decision had any immediate effect on Folsom's rights to the leased water. The intent of the decision was not to have any immediate effect on Folsom's prospective rights under the lease. In order to make this intent clear, by this decision, we will issue a stay of the prospective voiding of the lease as to Folsom. In other words, Folsom continues to have a right to receive water under the terms of the lease unless and until the Commission issues a subsequent decision to the contrary. SCWC may not stop providing water to Folsom or otherwise interfere with Folsom's use of water under the lease absent a decision that authorizes SCWC to do so.

In the meantime, OP 9 of the decision calls for briefing regarding the prospective rights of Folsom under three different scenarios. We reiterate our invitation to Folsom to participate in that briefing. We will add the City Attorney of Folsom to the service list for this proceeding to ensure that the City has notice of this order and any subsequent orders we may issue, as well as any pleadings filed regarding the lease of American River water rights.

There is an immediate need to issue this decision in order to clarify Folsom's continuing right to use water under the lease. The need for this

decision came to the attention of the Commission after the agenda for the April 1, 2004 meeting mailed.

**Assignment of Proceeding**

Michael R. Peevey is the Assigned Commissioner and David K. Fukutome is the assigned Administrative Law Judge in this proceeding.

**Findings of Fact**

1. D.04-03-039 was unclear as to whether the decision had any immediate effect on Folsom's rights to leased water from SCWC.

2. The intent of D.04-03-039 was not to have any immediate effect on Folsom's prospective rights under the lease.

**Conclusions of Law**

1. A stay of the prospective voiding of the lease as to Folsom is appropriate to clarify that SCWC may not stop providing water to Folsom or otherwise interfere with Folsom's use of water under the lease absent a decision that authorizes SCWC to do so.

2. There is an immediate need to issue this decision in order to clarify Folsom's continuing right to use water under the lease, and the need for this decision came to the attention of the Commission after the agenda for the April 1, 2004 meeting mailed.

**O R D E R**

**IT IS ORDERED** that:

1. As to City of Folsom (Folsom) and its prospective rights under its lease with Southern California Water Company (SCWC), the voiding of the lease pursuant to Ordering Paragraph 7 of Decision 04-03-039 is stayed. SCWC may not stop providing water to Folsom or otherwise interfere with Folsom's use of

water under the lease absent a Commission decision that authorizes SCWC to do so.

2. The City Attorney of Folsom is added to the service list of this proceeding as follows:

Steven P. Rudolph  
City Attorney, City of Folsom  
50 Natoma Street  
Folsom, California 95630

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.